

**FLATHEAD COUNTY PLANNING BOARD
WHITEFISH ZONING WORKSHOP MINUTES
FEBRUARY 11, 2015**

**CALL TO
ORDER
7:10 pm**

A workshop of the Flathead County Planning Board was called to order at approximately 7:10 p.m. at the Earl Bennett Building, Conference Rooms A and B in Kalispell, Montana. Board members present were Kevin Lake, Jim Heim, Jeff Larsen, Mike Horn, Dean Sirucek, Tim Calaway and Marie Hickey-AuClaire. Ron Schlegel and Greg Stevens had excused absences. BJ Grieve represented the Flathead County Planning & Zoning Office.

There were approximately 6 people in the audience.

**PUBLIC
COMMENT ON
MATTERS THAT
ARE WITHIN
THE
JURISDICTION
OF THE
PLANNING
BOARD
(2-3-103 M.C.A.)
7:11 pm**

Dave Taylor, City of Whitefish Planning Office, wanted to remind the board the city of Whitefish city limits did go to the mean low water line of the entire lake. So the majority of the types of permits which would be issued for the lakeshore would be within the city limits so subject to Whitefish's regulations including all docks, buoys, shore stations, trampolines and water lines around the entire lake whether in the city or county. Things which happened above the mean low water mark would be subject to the county regulations. Because of that he did look at the regulations updates. Someone who did want to get a dock or a waterline would be subject to two permits, one from the city and one from the county. He and Grieve felt this was an issue which should be attempted to address. It was unfair to the public to pay two separate fees and go to two separate public agencies to permit one dock or one waterline. They were happy to work with the county to come up with a memorandum of understanding (MOU) or some way to work through that issue so there was a decision on who had jurisdiction over what and maybe a little give and take so the public only had to go through one process. As far as interim zoning, they applauded the board's efforts to make the zoning permanent for consistency for the public and developers. They had concerns about B-2 adjacent to city limits and would like to see zoning as similar as possible to the Whitefish zone WB-2. They were also concerned about repealing the 1996 Whitefish City-County Master Plan. With that repeal they would be eliminating a lot of detail planning work around the Whitefish area including the protection of important farmlands. Also, within that document, there were maps which showed environmentally sensitive areas which were a real consideration as the board approved

development in the future. If they did any updates in the future to the county growth policy, he would like to see some of those things incorporated in the document so they would have guidance when they approved development.

Lyle Phillips, 2840 Rest Haven Drive, wanted to comment on Taylor's comment concerning having to get permits from two entities for lakeshore. For years, they went to one entity office which was the city of Whitefish even though they lived in the county. He saw nothing wrong if he had to put in a permit to do something on his property to go to the county. In a sense, his dock had to float on state water and the land below had been annexed. So they could conceivably say that if they dropped an anchor, they had to get a permit from the city. But the county could permit that as long as they followed the regulations. He did not see that as a big deal, having to go to two different entities, if the city of Whitefish could be trusted to cooperate with the county. In the past they had not done a very good job with that. He just wanted to bring up it was not a big deal to go to two different places for a permit. Again, there would be some discussion on whether or not a dock floated on state water. It did not float on city water.

Rebecca Norton, 530 Scott Avenue, passed the board a handout on why they developed the critical areas ordinance. She said she had been giving Grieve a lot of feedback on the public process because she thought there had been significant errors.

Sirucek asked if Norton could speak up.

Norton said she would try. She repeated her name and address. She said she had been emailing Grieve quite a bit because when she first started coming to these, he told her that every single thing was public record. So, the board actually got something from her which she never expected to go to the Planning Board. So when she talked to Grieve at that time, she was told everything went into the public record. She assumed whatever she sent to him, the board would get a copy of. But they had not. Sometimes it had been a legitimate mistake, things got misplaced. Sometimes she had called and said 'why isn't this part of the public record?' Tonight there were two things which she thought would be in the packet. One was why the Whitefish Lake bottom was annexed, but she didn't see it in the packet.

Grieve asked if that was the 13 page document she had faxed the office.

Calaway and Hickey-AuClaire confirmed they had received the information.

Grieve said he had sent Norton an email confirming that had been submitted to the board in their packets, that was not part of the public comment submitted to them tonight. He explained that in an email which was in the packet they received tonight.

Norton thanked Grieve. She wanted to confirm they had received it because during this deliberation previously, one of the members said it was an unethical move by the city of Whitefish to annex the bottom of Whitefish Lake. It was mandated by the state. The state signed off on it and the county originated the idea. It was when the zoning switched from the county to the city because the city was growing so quickly. The other question which came up that this board did not answer at the time, even though the answer was available, was why did Whitefish initiate the critical areas ordinance? What happened to the critical ordinance in the donut when the donut was taken away and the ordinance was lost? All of the water protections to help them grow and keep the water clean were now gone. The other thing she would like to bring up was there was some misleading language in the report because it talked about how many people had contributed to giving feedback. Very few people had actually been part of the public process. When she counted up the numbers, there were 20 people in favor of keeping what zoning Whitefish had created and the board had used in interim zoning, three people wanted commercial along 93. What the board might not know was the city originated a corridor study plan and had approached the county to do that at least once. The county refused to do it. There were a lot of attempts by the city to proceed with corridor planning along highway 93 that were refused by the county. She thought in the county commissioners' minutes, they were planning on doing some listening sessions in Whitefish. She thought it got missed. She read it in one of their minutes. She would encourage the board to actually go to Whitefish and listen to people. Most of the time they would hear the question 'what was the county going to do to my property?' But she thought the big picture needed to be explained as well as because she really thought people would be upset when they began to see what would really happen. They were part of the board's responsibility too. She thanked the

board.

Hickey-AuClaire thanked Norton, asked if there was any other person who wished to comment and reminded the public there would be another opportunity to comment at the end of the workshop.

**UPDATE ON
TEXT
AMENDMENT
TO THE
FLATHEAD
COUNTY LAKE
AND
LAKESHORE
PROTECTION
REGULATIONS
TO ADD
WHITEFISH
AND LOST
COON LAKES
BEING
PREPARED FOR
CONSIDERATION
BY PLANNING
BOARD AT
MARCH 11,
2015 REGULAR
MEETING
7:21 pm**

Update on text amendment to the Flathead County Lake and Lakeshore Protection Regulations to add Whitefish and Lost Coon Lakes being prepared for consideration by Planning Board at March 11, 2015 regular meeting. Update will include latest information on Flathead County/Whitefish Lake and lakeshore jurisdictional boundaries.

Grieve gave a history of the text amendment to this date. He said the office would be posting the text amendment and option analysis to the website no later than Friday, February 20, 2015. The reason this agenda item was on the workshop was simply to give the board an update on what types of things had come through related to the situation. One item was the jurisdictional issue at the edge of Whitefish lake. The county had known for some time the city had annexed the bottom of the lake to the low water mark. There was not a meets and bounds description or elevation for the low water mark provided in the resolution. When the jurisdiction had come back to the county, the office had done investigation and learning and discussion with Whitefish to understand what the low water mark was. At that time there was no additional information available. The low water mark was the low water mark. The mean high water mark was specifically defined in statute. Whitefish Lake, the county's Whitefish Lakeshore regulations and the city's Whitefish and Lost Coon Lake regulations, had an actual high water value given to the one hundredth of an inch, which was helpful for administrative purposes. Other lakes which went up and down vertically could affect the horizontal distance. He had asked the board if it was possible to put the high water mark into the amendment. He had since learned there were three high water values. He went on to explain why there were three values which included information from the Whitefish Lake Institute. He summarized at length what the information was. He hoped the board could discuss the three values for the high water mark and bring him a decision to add to the Lake and Lakeshore Regulations in a text amendment. He brought the information to the meeting so the board could discuss the information, take the analysis as well as the public comment and when there was the

public hearing on the text amendment, they could amend the numbers if they wished. The city of Whitefish had determined the low water mark would be like the playing line. He gave the analogy of riding a hovercraft into the city of Whitefish. The driver was not touching the ground however they were in the city. That was his understanding of their interpretation of that boundary. He gave examples of difficulties with the jurisdictions on the lake. If they could come up with boundaries everyone could agree with, if there could be cooperation between the city and county, difficulties could be avoided. An agreement of who had jurisdiction over separate things would be more challenging than an elevation above sea level which constitutes a low water mark. From an administrative point of view, it would be nice to have a mean high water mark and an elevation which was the low water mark. If anyone requested to do anything from low water out, they would need to talk to the city. If anyone requested to do anything from low water up, they needed to talk to the county. If they wanted to do something which crossed that mark, they needed to get two permits. If that became burdensome in the future, there could be potential for an agreement. At this point, he was preparing a text amendment. The objective was to keep it simple and get the regulations consolidated into one set of regulations for Flathead County. He asked the board if they had any questions or discussion on the analysis or the low water or high water mark.

Horn asked Grieve if there would be two sets of regulations.

Grieve gave a history of what the county's jurisdiction was since they were now responsible for the former inter-local agreement area (donut). He also reviewed the history of the lakeshore regulations before, during and after Whitefish had the donut. As of this time there were three sets of lakeshore regulations in Flathead County. One applicable to all other lakes, one applicable to rural properties on Whitefish and Lost Coon Lakes and one applicable to city properties on Whitefish Lake. The project the board had been given was bring the number of regulations down to two. One that applied to all the rural lakes, the other was Whitefish's regulations.

Calaway understood there was a problem between high-water and low-water. If there was a permanent structure which had footings under water in the lakebed, that was definitely Whitefish's jurisdiction. He did not see how a floating dock which could be pulled and moved and acted like a boat could be

under their regulations. He did not understand Whitefish's jurisdiction if it was a floating dock, floating trampoline, or anything else which was on the water and not permanently fastened. Even an anchor which was not permanent was something he would say was not Whitefish jurisdiction.

Grieve and Calaway discussed the question of jurisdiction.

The board and Grieve discussed the jurisdiction of the water of the lake, if there was a definition, where to look for a definition, annexation law and jurisdiction. The board discussed the opportunity to define this gray area, the visual aid depicting the differences between the Whitefish and county lakeshore regulations, the opportunity for compromise and if the board wanted footnotes for Whitefish Lake in the regulations for specific items such as waterlines, etc. They also talked about places where the county and city could agree, where they might disagree and where they might compromise. They discussed if these agreements would be a MOU or text amendment.

Grieve clarified they would put in a mean high water mark, low water mark and come up with an MOU as to who would process the permit.

The board and Grieve discussed options for jurisdiction, what the plan for process now was which was to process the text amendment and then, when the work plan allowed, go in and update the county lakeshore regulations. They also talked about working on an agreement with Whitefish.

The board asked Grieve to come to them with a high water and low water mark.

The board and Grieve discussed at length the specific definitions they wanted brought to them, how the locations would be determined, the administrative challenges, how mean high water was figured and the wording of the annexation resolution.

Hickey-AuClaire asked if there were any more questions of Grieve.

Horn asked since there would be two separate regulations how would they relate?

The board discussed possible options and floating docks.

Grieve and the board discussed options to avoid some of the issues concerning docks, etc. at length.

The board and Grieve debated if mean high water definition was an issue or if the issue was the low water mark. They said the issue of who was in control could be defined after the text amendment was adopted.

Grieve clarified the board wished him to present a text amendment with the lowest low water mark of record as the low water mark.

The board and Grieve discussed how compromise could be started with the city of Whitefish.

Grieve asked the board to review the public comment they had received at this workshop before the meeting on March 11, 2015. Any public comment the office received before packets were mailed, would be sent in the packets. If they received comment after packets were sent, then the board would receive the comment before the meeting.

Sirucek offered options for obtaining the low water mark. Having a tenth level difference was not a large difference.

Grieve clarified what Sirucek suggested he take for the mean high water mark. He clarified the board wished him to take the mean high water mark for the text amendment.

The board and Grieve discussed if they wanted to put in mean high and low water marks.

The board decided to use mean high water mark and low water for the text amendment.

Grieve reviewed the analysis for mean high water mark.

The board briefly discussed if they had a preference for which mean high water mark Grieve used in the text amendment.

**PLANNING
BOARD
DISCUSSION
8:07 pm**

Discussion of Commissioner's February 02, 2015 consideration of the Planning Board's January 14, 2015 revised recommendation on how to proceed with Whitefish planning and zoning.

Grieve briefly reviewed the history of the agenda item and said the commissioners did not have discussion concerning the board's recommendation on how to proceed with Whitefish planning and zoning. The recommendation was unanimously approved.

**PRESENTATION
TO PLANNING
BOARD OF
INFORMATION
REQUESTED BY
PLANNING
BOARD AT
JANUARY 14,
2015
8:08 pm**

Presentation to Planning Board of information requested by Planning Board at January 14, 2015 regular meeting pertaining to Whitefish planning and zoning. To include:

- a. List of issues identified by public pertaining to planning and zoning around Whitefish.
- b. Report detailing issues and research of issues by planning staff.
- c. Maps showing areas with issues identified and researched in report.

Grieve reviewed the process by which the office had come to the issues report which had been posted on the website and notice had been given to the board of its posting. He said there were three issues which were further researched. The methodology for how they were researched was presented on the issues report. The first issue was the Houston Tracts area. There was concern with there being multiple zoning classifications all within a very tight area, as well as individual properties being annexed while others were not. He listed the zones in the area. Staff researched the area and presented the board with a map of all the different zones in the area as well as the differences in zoning. The second area researched was Karrow Avenue. The concerns raised were the question of why one side of the avenue was 10 acre zoning, the other side 2.5 zoning and the north end was R-3 which required sewer and water services with a density of three or four units per acre. The third issue was the Highway 93 area, both north and south of Highway 40. Issues raised for north of Highway 40 were the interim zoning of county B-2 was different than the WB-2 zoning which existed prior. There wasn't a lot of comment from people saying other interim zoning was different. The county B-2 zoning which replaced the WB-2 zoning did generate quite a bit of public comment and criticism of the change. South of 40, the issue was raised as to why it was all zoned SAG-5 when it was along the highway. That raised comment that south of 40 should have some sort of transitional zoning or some type of business zoning to accommodate a lot of the existing uses which were businesses. The office did not put forth they had exhaustively researched every single comment

because many of them were self-explanatory. When staff had heard many comments about the same area from the workshops on 10/29/14 and 10/30/14, they took a closer look at the zoning in the area. He asked the board if they had any questions and reviewed what was available and where.

Larsen asked if the information was just for the board to consider what they might want to do moving forward.

Grieve said it was simply research. It was proactive research done by the office for the workshop. The board could review it or take more time with it and schedule another workshop.

Sirucek had two recommendations. He suggested having acreage on the maps so the lot size was known. Scale would be helpful.

Grieve said the scale was at the bottom right of the map.

Sirucek said that was miles and then you had to figure out the acreage from there. He thought staff could go into GIS and find the information. He suggested going ahead and creating a map for acreage, because the board would be discussing the information among themselves as well as with the public, it would be a good thing to have. His other suggestion was the development of a correlation table which had map unit A, B and C and what their differentiating criteria were. Do that for the county zoning map units and do that as well for the Whitefish zoning map units.

Grieve said the office had done that when interim zoning was adopted. He offered to send Sirucek a copy of the information.

Sirucek said that would be helpful.

Grieve summarized what was on the table. He offered to resend the table to the board members.

The board asked for the resend.

Horn said there was a question on the critical areas ordinance and asked Grieve to explain.

Grieve said the critical areas ordinance was adopted by the city of Whitefish and applied to the area which, at that time, was under their jurisdiction. When the inter-local agreement area

reverted back to the county, anything which had been adopted by Whitefish applicable outside of the city limits, ceased to exist. The critical areas ordinance had since been reworked and renamed and was applicable inside the city limits, but not outside because it was adopted into their zoning. County interim zoning was now applicable outside the city limits of Whitefish.

Calaway asked if Whitefish had any annexation plans.

Grieve deferred to Taylor.

Taylor said he did not make those decisions. He did know the Houston Point tracts were something the city had discussed because it was totally surrounded by the city limits. At some point it would most likely be annexed.

Calaway asked because sometimes there was not a lot of use of the board spending time on an area if it was slated for annexation.

Taylor said there was a good chance that section would be annexed in the future.

Calaway said he did not know about Karrow Avenue.

Taylor said most of that area was not slated for possible annexation.

Grieve said his thoughts, after making the list and reading the issues report forwarded by staff, was that most of the issues, if they were to try to go in and fix them, would solve the issues. It would be difficult to justify which issues were resolved and which were not resolved. If the board were to say they were going to look at certain issues and not others, it would be hard to justify. If the board tried to resolve all the issues, any one, individually, could result in problems which would hold up the whole process. September 9, 2016, if they did a one year extension, was the end of interim zoning. The board was already four months into a 24 month time period. He gave examples of the issues which would be hard to solve within the timeframe. It was mentioned earlier a couple of landowners did want to do a plan for the area while the area was under litigation. The county would not work on a plan while it was not certain who would have jurisdiction in the future. Those were his thoughts from a timing point of view. If the objective was to have something in place which was long

term sustainable, then there was not a whole lot of time to work on fixing problems.

Calaway thought the office did a good job when they did interim zoning.

Grieve said the only comparable interim zoning which appeared to be a miss was the B-2 zoning. If something was WR, WER, WSR, there was some discussion about Houston Tracts and how the two matched up. It seemed based on feedback received that going from WB-2 to B-2 generated some concerns. The only other issues were the BR-4 at Whitefish Mountain Resort. He went on to explain the issue at Whitefish Mountain Resort and why it should be fixed.

Calaway and Grieve discussed which issues would be easily solvable.

Calaway thought by September, the board should be close to having things solved. He did not see there needed to be an extension since the interim zoning followed as closely as possible the former zoning. He said permanent zoning was close with what had been done for interim zoning.

Grieve and the board discussed the pros and cons for options for dealing with the issues raised by public comments and permanent zoning. They also spoke about the concept of spot unzoning, if that was what the board was talking about, leaving the issue areas zoning with former interim zoning and how to solve the issues within the time limit. They also discussed if the county needed to fix the issues instead of having the people submit the appropriate applications to solve the problems like the rest of the county. They debated on what could be fixed, what could not be fixed and what the timeline would be if they adopted the interim zoning as permanent. They discussed at length the options for fixing the issues after permanent zoning was in place. They also discussed the option of adding new zoning designations, the new zoning designations in the interim zoning, how to add the new zoning designations into the zoning regulations, the current interim zoning map and when major problems could be tackled. They discussed in detail the process for adopting interim zoning as permanent. They could repeal the '96 plan, place the neighborhood plans into the growth policy, modify the growth policy as needed and then move forward with the zoning.

**SCHEDULING
OF NEXT
WORKSHOP OR
MEETING
8:51 pm**

The board and Grieve decided to schedule the next workshop after the next regular meeting on March 11, 2015 and the next workshop after that on April 8, 2015 after the regularly scheduled meeting.

Grieve and the board discussed what would be discussed at the next two workshops, what was available on the Planning and Zoning website depicting the interim zoning, the timeline necessary to follow process and probable outcomes of the workshops.

**PUBLIC
COMMENT ON
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THE
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OF THE
PLANNING
BOARD
(2-3-103 M.C.A.)
9:09 pm**

Sarah Nargi, 5850 Hwy 93 South, wanted to talk in support of changing the zoning in her area. Everyone she had talked to on the strip of land which was on Highway 93 South wanted some sort of transitional zoning of light commercial, not heavy traffic, not heavy commercial, a professional district. There were many reasons the land could not be sold as residential. No one wanted to live on the highway. The commercially zoned areas were all nicely kept up. Dave De Grandpre had done a lot of research on the strip. There were land owners willing to pay for any corridor study needed. She did not know about corridor studies, but a lot of road and access information had been looked at. De Grandpre had put together a recommended zone regulation so it would be easier for the board to amend it instead of create it. It would be wonderful if the light commercial zoning could be created. Whitefish had adopted a growth plan which included this property and it had been in limbo for a long time. She knew all the land owners agreed that zoning would look nice and be fair.

Rebecca Norton, 530 Scott Avenue, said your decision making was supposed to reflect the integration of public into the final board decision making. Only one percent of the affected people had given input to date. She would like to recommend a county planner to come up to the Whitefish City Planning Department and have office hours to meet with people, who consider Whitefish their home, to answer specific questions about how their property would be affected. She thought it would be a nice outreach. She still thought most people were mostly concerned about their own property and didn't understand the county was doing a big picture. She liked that the board was sticking with interim planning to date. She thought interim planning was appropriate and glad T. Bower offered to do the corridor study. They had wanted to do that in Whitefish for a long time and had been blocked by the county. It had come up a lot and had

always been blocked. She thought if there could be negotiations about the study it would be an appropriate thing to move towards. She liked the board's discussion and felt Calaway had a nice way of pulling everything together. She thanked the board.

ADJOURNMENT The workshop was adjourned at approximately 9:14 pm.
9:14 pm

Marie Hickey-AuClaire, Chairman

Donna Valade, Recording Secretary

*APPROVED AS **SUBMITTED**/CORRECTED: 3 / 11 / 15*